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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,556	12/22/2003	Jeffrey Dean Lindsay	KCX-767 (19738)	5072
22827	7590	05/17/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,556

Applicant(s)

LINDSAY ET AL.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 13,17,19,20,29,33,35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-12,14,21-28,30 and 37-44 is/are rejected.
- 7) ☒ Claim(s) 6,15,16,18,31,32 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the species of Group Ia, the layer of Group I and Geometry I in the reply filed on August 12, 2005 is acknowledged.

Claims 13, 17, 19, 20, 29, 33, 35 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Claim 19 has also been withdrawn since it is drawn to the dome geometry. Election was made **without** traverse in the reply filed on August 12, 2005.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-12, 14, 21-25, 27, 28, 30 and 37-44 rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman et al. (US 5624427) in view of Dubowik (US 4870725).

Bergman et al. (figures 1a, 8-10) teaches generally sinusoidal elastically stretchable fastener material for a garment wherein non-woven fastener material 54 is within the depressions formed by the layer 53. The fastener material is extendable so that the separation of the peaks and depressions decreases as the material is stretched. The difference is that the fastener material is on the peaks as well as in the depressions. However, Dubowik (figures 2-17) teaches that there is an advantage in lessening the exposure of fastener material by removing it from the elevated regions because it provides for enhanced selective engagement and inherent lessening of

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the opportunity of undesired engagement. As improved selective engagement can be an important and beneficial feature for the fastener of Bergman et al., it would have been obvious to remove the fastener material from the elevated regions in view of Dubowik teaching that it is desirable to have the fastener material in regions that are depressed so as to have improved selective engagement and inherent lessening of the opportunity of undesired engagement. The particular amount of extension is a matter of picking a value between the extremes shown by Bergman et al. and Dubowik wherein the fastener either extends outward to form an elevated region in one orientation as shown by Dubowik or approaches the mid-plane but has no disclosure of extending beyond the midplane as shown by Bergman et al.

Claims 4, 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman et al. (US 5624427) in view of Dubowik (US 4870725) as applied to claims 1 and 21 above, and further in view of Schmitt (US 5779691).

Further modification of the fastener of Bergman et al. such that the fastener has a reinforcing elastic layer would have been obvious in view of Schmitt (figure 1) which teaches applying an elastic reinforcing layer 32 to a pleated member so as to reinforce its elastic qualities as being a desirable function.

Allowable Subject Matter

Claims 6, 15, 16, 18, 31, 32 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed March 3, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no motivation to combine the teachings of Bergman et al. and Dubowik or that it would result in the bodily incorporation of the bi-stable substrate of Dubowik into the device of Bergman et al., the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicant argues that since Bergman et al. desires to have a strong connection that this would preclude the removal of fasteners from the peaks. The argument is not persuasive because Dubowik shows in figure 3 that the lack of fasteners at the ends of the substrate 30 abutting the member 20 permits face-to-face engagement between members 18 and 20 and also good engagement of the fasteners within the valleys when in the engaged condition. The structure is shown in Dubowik, figure 3, provides for face-to-face engagement of the members 18, 20 a beneficial result in many fastening functions and thereby provides sufficient motivation to combine the teachings of the references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB